

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

ADT, LLC,	:	Case Nos. 16-CA-144548
	:	16-CA-168863
Respondent,	:	16-CA-172713
	:	16-CA-179506
and	:	16-CA-180805
	:	16-CA-181198
COMMUNICATIONS WORKERS OF	:	16-CA-187497
AMERICA, AFL-CIO,	:	16-CA-191963
	:	16-CA-199947
Charging Party.	:	16-CA-200961
	:	16-CA-209070
	:	16-CA-209995
	:	

**RESPONDENT’S ANSWERING BRIEF TO GENERAL COUNSEL’S LIMITED  
CROSS-EXCEPTION AND BRIEF IN SUPPORT THEREOF, TO THE  
ADMINISTRATIVE JUDGE’S DECISION**

Respondent ADT, LLC d/b/a ADT Security Services (“ADT” or the “Company”), by and through its attorneys and pursuant to Section 102.46 of the National Labor Relations Board’s (the “Board”) Rules and Regulations, submits this Answering Brief to General Counsel’s Limited Cross-Exception and Brief in Support Thereof, to the Administrative Judge’s Decision.

**I. Background.**

On November 16, 2018, Administrative Law Judge Robert A. Ringler issued his decision (“ALJD”) in the above-captioned matter. On February 11, 2019, ADT filed exceptions to the ALJD. On April 4, 2019, the counsel for the General Counsel (“GC”) and the Communications Workers of America, AFL-CIO (the “Union”) filed their respective answering briefs to ADT’s exceptions. The GC also filed two limited cross-exceptions and a supporting brief. The cross-exceptions are:

- (1) The ALJ did not apply the proper standard when analyzing whether the language in the collective bargaining agreement (“CBA”)

limited Respondent's dues-checkoff obligation to the duration of the agreement.

- (2) The Board should clarify the standard for enforcing the terms of dues checkoff agreements by adopting the General Counsel's position set forth herein.

## **II. Statement of Facts.**

Prior to the withdrawal of recognition, ADT and the Union utilized a CBA, which addressed dues checkoff obligations. (GC Exhibit 4). Article 3, Voluntary Checkoff, states:

- a) For the period of this Agreement, upon receipt of a written personally signed authorization on a form approved by the Employer from any employee subject to this Agreement, the Employer will deduct from such employees' pay, the weekly membership dues, provided, however, that the Employer shall not be obligated to deduct any delinquent dues which became delinquent prior to the effective date of the authorization. The Employer will transmit to the Secretary Treasurer of the Union on or before the 15th day after the last pay day of each month, the total deductions made by the Employer, together with a list of those employees from whom such deductions have been made.
- b) When earnings are insufficient to cover the authorized dues, Union dues shall be deducted from the next payroll in which sufficient pay is available.
- c) Termination of Authorization of Deduction of Dues will be recognized only during the ten (10) day period immediately preceding the anniversary date of this agreement with Certified Mail copies to both the Company and Union.

(GC Exh. 4).

On March 3, 2014, the Company filed an RM Petition in the underlying matter, and on April 8, 2015, the Board conducted a secret ballot election. The ballots then remained unopened in a ballot box until the Board ruled on the RM matter in May 2017. *ADT, LLC*, 365 NLRB No. 77, slip op. at 1 (May 17, 2017).

On May 31, 2017, the Company withdrew recognition based on objective evidence that the employees no longer wished to be represented by the Union. At that time, the Company also ceased continuation of payments under Article 3, Voluntary Checkoff, of the CBA because the CBA no longer applied to the employees.

**III. ADT had no legal obligation to continue to check off dues following the withdrawal of recognition.**

ADT believes it had no legal obligation to continue to check off dues following the withdrawal of recognition in May 2017, as it maintains that *Lincoln Lutheran of Racine*, 362 NLRB No. 188 (2015), was wrongly decided for the reasons stated in the dissent. Specifically, in that 3-2 decision, the Board improperly overturned over fifty (50) years of precedential history under *Bethlehem Steel, Co.*, 136 NLRB 1500 (1962), in holding that employers could not unilaterally end dues checkoff at the expiration or termination of a collective bargaining agreement. As Members Miscimarra and Johnson stated in their dissent, the majority's assertions that the new rule is necessary to protect the bargaining process is legally incorrect and bad policy.

While ADT understands that the ALJ is bound to follow current Board law, ADT believes that the current Board should overrule *Lincoln Lutheran* and return to the long-standing Board precedent that stated that dues check off provisions do not survive expiration of the collective bargaining agreement. First, dues check off is a form of union security, which becomes revocable, regardless of its terms, if the employees vote to deauthorize the union. Second, the majority's comparison of dues check off to other voluntary check off agreements, such as an employee's savings accounts and charitable contributions, is a misinterpretation of the Act and should therefore not be afforded the same treatment. Finally, the decision to overrule *Bethlehem Steel* "modifies one of the established substantive aspects of the bargaining process to an extent



Congress has not countenanced," and such changes have a severe effect on the bargaining process as it improperly limits the employer's bargaining leverage.

Assuming for the sake of argument that the position advocated by the GC is adopted by the Board then, presumably, the Company would have lawfully stopped dues authorization pursuant to Article 3 of the CBA. The first sentence begins: "[f]or the period of this Agreement..." As accurately noted by the GC, these five words indicate that Article 3's voluntary dues check off is only applicable during the period of the Agreement, and *not after* the Agreement ends. Thus, when the Company lawfully withdrew recognition, this Article became void, and dues were no longer to be deducted from employees' paychecks.

However, rather than following the General Counsel's proposal of creating a new standard for dues check off which would in some way, enforce the "common meaning of the terms of the bargained-for agreement," the Board should just overturn *Lincoln Lutheran*, and return to the *Bethlehem Steel* standards. Regardless of whether the Board determines that it should overturn *Lincoln Lutheran* or to adopt the GC's new standard, the Company did not violate the Act.

#### **IV. Employee Revocation Is Not Related to the ALJD.**

While the Company agrees with the GC's request to reconsider current law regarding employee revocation of checkoff authorization after contract expiration, this matter does not involve a question of law related to employee revocation of dues, and should not somehow be added this late in the 'game.'

#### **V. Conclusion.**

ADT urges the Board to overturn its decision in *Lincoln Lutheran*, rather than create a new standard for articles in collective bargaining agreements related to dues checkoff. The Company also believes it has not violated the National Labor Relations Act by ceasing payment of dues after

its lawful withdrawal from the Union. Finally, while the Company believes the Board, in the future, should reconsider current law related to employee revocation of checkoff authorization after contract expiration, it should not do so here because it was not an issue in this matter.

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Dated: May 2, 2019

Attorneys for Respondent, ADT, LLC

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 2nd day of May, 2019, true and correct copies of the above and foregoing **RESPONDENT'S ANSWERING BRIEF TO GENERAL COUNSEL'S LIMITED CROSS-EXCEPTION AND BRIEF IN SUPPORT THEREOF, TO THE ADMINISTRATIVE JUDGE'S DECISION** was electronically filed through the National Labor Relations Board's website, and a copy electronically mailed to the following:

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